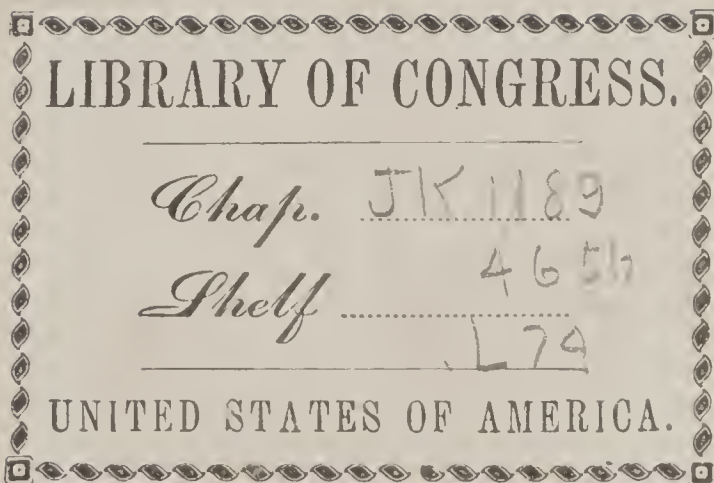


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UNITED STATES OF AMERICA.

THE RIGHT OF A STATE TO REPRESENTATION
IN THE SENATE.

SPEECH

OF

HON. J. E. BAILEY,

OF TENNESSEE,

DELIVERED IN

THE SENATE OF THE UNITED STATES,

FRIDAY, APRIL 23, 1880.

SPOFFORD vs. KELLOGG,

FROM LOUISIANA.

WASHINGTON.

1880.



S P E E C H
OF
H O N . J . E . B A I L E Y .

The Senate having under consideration the resolutions declaring that WILLIAM P. KELLOGG was not elected and that Henry M. Spofford was elected United States Senator from the State of Louisiana for the term beginning March 4, 1877—

Mr. BAILEY said :

Mr. PRESIDENT: The credentials of WILLIAM PITT KELLOGG as Senator from the State of Louisiana for the term of six years beginning the 4th day of March, 1877, and signed by Stephen B. Packard, who claimed to be the governor of the State, were presented to the Senate on the 20th January, 1877. On the 4th of March of the same year Mr. KELLOGG applied to be sworn in, but the Senate then refused to admit him. In the month of October the credentials of Henry M. Spofford, claiming the same seat, and signed by P. B. Nicholls, then actually governor of the State, were presented.

These credentials were referred by the Senate to its Committee on Privileges and Elections, and on the 26th day of November, 1877, a majority of the committee reported that on the merits of the case KELLOGG was entitled to the seat, and the Senate admitted him to it on the 28th of the same month.

The Legislature of the State of Louisiana solemnly protested against the action of the Senate, as a denial to the State of its right to representation in this body by a Senator chosen by the Legislature thereof as guaranteed by the Constitution of the United States, and in March, 1879, Mr. Spofford presented the memorial, and complained that upon the former hearing before the committee he had been denied the privilege of introducing important testimony. He further claimed that he had discovered new and material evidence which would establish that when the Legislature was elected in 1876, KELLOGG, then the governor, used the power, patronage, and resources of his office to procure the election and return of a general assembly for the purpose of securing his election to the Senate, and afterward by menaces and bribery secured the vote of its members, and that but for such menaces and bribery he could not and would not have obtained the nominal election under which he claims the seat.

This memorial was referred by the Senate to its committee and authority given to it to take testimony, and to send for persons and papers. The committee has reported that Spofford is entitled to the seat, and thus is brought to your attention and before the Senate, and for its judgment, the important question to be discussed.

As one of the committee that made the report, I give to its recommendation my unqualified approbation and support. I do not propose to go into an examination of the facts now for the first time brought to light, which disclose a state of public and private morals among the men who composed what is known as the Kellogg legislature disgraceful beyond all that could have been imagined, nor will

I even make an allusion to the acts of bribery and corruption of which the book of testimony is full. I prefer to examine the case from a different point of view.

I believe Mr. Spofford was elected in conformity with the commands of the Constitution and laws of the United States, by the only body that could justly claim to be the legislature of the State, and propose, Senators, for a little while to discuss the very interesting questions that the conclusion presents.

But in the very outset it has been said, and the point has been pressed with great earnestness, both by the counsel for Mr. KELLOGG and by the minority of the committee, that all the questions of law and fact involved were presented upon the former reference, were solemnly adjudicated by the Senate, and having been adjudged are not open to inquiry. It is said that the former action of the Senate is conclusive upon the parties and the State of Louisiana as to every fact and every question that could have been considered, and invoking the aid of the maxim familiar to lawyers, and of frequent use in courts of judicature, that "*interest reipublicæ ut sit finis litium*," it is contended that the matter in controversy is "*res adjudicata*," and all the world is estopped from denying Mr. KELLOGG's right to the seat. To afford a foundation for this extraordinary effort to ingraft upon the proceedings and practice of a legislative body maxims and pleas that have been adopted from considerations of convenience by courts instituted for the settlement of questions of private right, it is asserted that the questions raised are legal questions, and that in respect to the matter under consideration the Senate is a judicial tribunal.

I readily, indeed heartily, agree to the first proposition. This controversy does present grave questions of law—of public and constitutional law—questions that should provoke the most thorough discussion in this Chamber and throughout the whole country; they should interest not only you, Senators, but every statesman and jurist and citizen; and I cannot believe that any one here will dare approach their consideration without painstaking research and the calmest and most conscientious self-examination.

But I dissent and *toto cælo* differ from the gentleman as to the last proposition.

The Senate is not and from its very constitution cannot be a judicial tribunal. The fundamental law that provides for its creation undertook to parcel out the powers and duties of the different departments of the Government, and separated them into three great divisions: the executive, the legislative, and the judicial. To each of these was allotted the work it is to perform, and each has its appropriate functions.

All legislative power—

Says the Constitution—

herein granted shall be vested in a Congress which shall consist of a Senate and House of Representatives.

And again it provides:

The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and establish.

By another section one exception is made, if indeed it be an exception, to this grant of judicial power. Great officers of state may be impeached by the House of Representatives for high crimes and misdemeanors, for crimes affecting the public welfare, for crimes connected with the administration of affairs, and, perhaps, for crimes

that prove them unworthy to fill great political stations. If thus impeached the Senate has the sole power to try them, and when sitting for that purpose as a court Senators shall be "on oath or affirmation." The punishment is political, and political only. It can extend only to "removal from office and disqualification to hold and enjoy any office of trust or profit under the United States."

With the exception named, the judicial power of the United States, and if the Constitution means anything, its entire judicial power is vested in the supreme and inferior courts. To them is committed the authority as judicial tribunals to construe, to expound, and to ascertain the law, and to enforce its commands in controversies of every kind subject to their jurisdiction. In these tribunals resides the judicial power of the Government, and by them the axiom and rules relied upon have been borrowed from like tribunals of our mother country.

The Senate, however, is a legislative body. Its office and functions are political. It is true that in the ordinary course of its procedure each Senator, and the Senate as a body, may find it necessary to construe laws and pass upon legal questions of the most abstruse kind, but this is only for the purpose of instructing the mind and conscience. The act is a step in the performance of a political function.

So, where the Senate is called upon to judge as to the election of one of its own members, it may have to settle doubtful questions arising under the Constitution and laws of the United States, or of the State that seeks representation. In such case the Senate is the judge of the election. That is, it must determine and decide upon every fact presented and every question of constitutional or statutory law that may arise. In discharging this duty the Senate is a court, as every jurisdiction, civil, criminal or ecclesiastical, is a court. It is a court in the sense that the Legislature of Massachusetts is "the general court," or that the general assembly of the Presbyterian church is a court.

Although it judges or decides, and in the sense described is a court, its proceedings are not judicial, nor is it or can be a judicial body. It is a legislative body with inherent as well as constitutional authority to judge or decide who shall be admitted to take part in its deliberations and share its responsibilities. In exercising this function it may be called upon to consider the relations of a State to the Federal Government, to inquire into and decide upon the right of the people of a State to settle their own government, or upon the regularity of the acts and proceedings of a State Legislature; but these questions at last concern only the body-politic; they relate to government, to the constitution of the Senate as a legislative body, and to the lawfulness of representation. The duty to be performed, in the broadest as in the strictest sense, is political.

Upon what theory of government or what construction of the Constitution, then, can it be affirmed that in deciding upon a question like the one before us this becomes a judicial body, or the proceeding a judicial proceeding? The Constitution has not so declared. Indeed it has expressly committed to other tribunals all the judicial power of the United States, with the exception of the trial of officers impeached by the House of Representatives. Whence comes, then, the assumption of judicial power, with its concomitants of judicial methods, maxims, and rules? Certainly not from the Constitution. Will any one here undertake to point out the section or clause that justifies it?

Has the assumption any foundation in reason? Let us not be misled by a confusion of terms. Judicial power and judicial methods are one thing. The duty of every tribunal to decide fairly, justly,

honestly every question that may be brought before it is quite a different thing. The Senate rests under the highest obligation to society as do the courts to uphold and maintain in all their purity the Constitution and laws, the rights of the Federal Government and of the States. No Senator can escape the performance of the duty this obligation imposes. It binds his conscience and compels recognition. But does the endeavor to perform this duty change that which is a legislative body into a judicial tribunal and impose upon it the forms and methods, the rules of procedure and maxims of the latter? Is a Senator himself transformed into a judge because he may be called upon to decide a question of law, and attempt to decide it with judicial impartiality?

No, Mr. President, the claim cannot be maintained. It has no warrant in the Constitution. This is a legislative body, not a judicial tribunal; its functions are political and only political. As a legislative body it may adopt rules of its own to regulate its procedure, and facilitate the transaction of its business. But such rules are self-imposed; they cannot be imposed by others; they must be of a kind recommended by inherent propriety and a just regard to the object to be reached. They must help, not hinder, the attainment of justice and compliance with every constitutional obligation.

Nor is there any reason why this rule of *res adjudicata* shall be transplanted from another forum and made to take root here.

Natural justice makes no demand for its adoption. That requires justice to be done even after the delay of repeated litigation. It seeks to reach the real merits of every controversy, and with stern resolve redress every wrong. But inasmuch as human reason is imperfect the testimony on which it relies is often misleading, and its methods of investigation are defective, and as in the lapse of time the memory of facts becomes obscured, courts of judicature in the ordinary course of their business for the good of society, as well as their own protection, adopted the maxim quoted and formulated it into an ordinance of administration.

Experience, however, soon demonstrated that injustice and wrong were often the result of the application of the rule, and the courts without abandoning the rule itself were compelled to invent methods of relief, and the Legislature has given them willing assistance. Hence we have in courts of law retrials and writs of error, and in courts of equity rehearings and bills of review supplemented by statutes in proper cases granting appeals, and appeals in the nature of writs of error. All these methods of relief are in daily use to escape the grinding effects of a rule which it is proposed to import into a legislative body acting upon a question purely and simply political. And yet it is not proposed to bring with it the methods by which the harshness of its effect may often be avoided.

If the matter under consideration was one that affected only the rights of Mr. KELLOGG and Mr. Spofford there would be much force in the argument favoring the adoption of the rule. If this was a controversy as to which of the two gentlemen should enjoy the emoluments and be entitled to the dignity and honor of a seat in the Senate of the United States, the Senate might well say, indeed, having regard to the gravity of its duties and its responsibilities to the public, it should say: "It does not comport with the dignity of this body or with the public interests that the controversy shall be prolonged." The Senate should dismiss the application and proceed to perform other and more important duties. This is not such a controversy; it is one in which the State of Louisiana and the whole people

of the United States are interested. It involves grave questions of public and constitutional law and reaches to the very foundations on which our frame of government rests. It involves the relations of the States of this Union to the National Government; the rights of the States and of the people of all the States.

One of the States appears at the bar of the Senate and demands that her constitutional right to representation shall be respected. She says that by mistake or fraud or a wrong decision one has been admitted here as her representative who in fact is not her representative, and demands redress. She says that she is prepared to demonstrate the fact to the satisfaction of the Senate and the whole country. But to this earnest appeal it is proposed to reply: What you say may be true. The one you have chosen may have been rejected; another person, a stranger and an alien to your confidence may occupy the seat prepared by the Constitution for your own accredited representative; he may have mounted to this great position by fraud, by deceit, by our own mistake, but we cannot revise or reverse our action. We are fettered by a rule borrowed for the occasion from another tribunal, and the whole matter is *res adjudicata*.

Mr. President, such a reply is a denial to the State of a right guaranteed to her by the Constitution. The right cannot be questioned. No statesman or jurist in this broad land has ever questioned it. No one ever will. Has the former action of the Senate annulled it? Can that action annul it? Has the right been merged in a former judgment, or hidden out of sight so that it cannot be discovered? Not at all. It is a constitutional right, and continues until satisfied. It can be satisfied only by recognition. It continues from day to day, from month to month, from year to year. It speaks to-day in tones as earnest and in voice as exacting as it did two years ago. A wrong judgment of the Senate cannot hush it into silence, nor can the plea of *res adjudicata* be accepted as its fulfillment.

To give such an effect to the plea places the Senate above the Constitution, and makes it the constituent instead of the Legislature of the State. Such an answer declares that although the former judgment may have been the result of a conspiracy, or fraud, or mistake, now patent to all the world, yet its effect is binding and conclusive. It declares that the State may be robbed of its right, its constitutional right, to representation, not because of any fault or error of its own, but because somebody else has been in fault, or has been imposed upon. Such a doctrine is monstrous. Its only foundation is the desire to exalt the dignity and value of the judgment of this body and escape the duty to perform a constitutional obligation.

Nor can the failure to perform this obligation be excused on the miserable plea that there is danger in the precedent. If Mr. KELLOGG was duly elected by the true and lawful Legislature of Louisiana we should be eager to confirm him in possession of his seat and repel every effort to remove him. On the other hand, if Mr. Spofford has been elected by the true and legal Legislature, we should make haste to admit him to this body. Absolute justice requires this to be done. The Constitution requires it. A wrong decision is always a dangerous one, and may become a bad precedent; but a right decision always stands as its own justification. Bad men may seek to pervert it to a bad use, but good men will always be found to vindicate the principles upon which it rests and strip away every disguise from the motives of those who dare profane it.

But have we any precedents to instruct us in our deliberations or guide us in our action? After a good deal of research I have not

been able to find one that presents the very case before us, or that in the principles settled can be considered as fairly expressing the opinions of our predecessors upon the questions now to be determined. Only three cases can be found in our legislative annals where the action of either House of Congress in seating members after examination in solemn form by a committee has been called in question. Nor is it strange that the number of such cases is so small. Inquiries into the election of Senators and Representatives have been made usually with great care. Every fact has been brought to light through the diligence of the contestants, and every question of law involved has been thoroughly discussed by some of the very able lawyers and statesmen at all times to be found in Congress. The contestants have been satisfied by the judgments pronounced, or else, owing to the temper of party majorities, they have been convinced that further contest would be useless.

The earliest case arose in the House of Representatives in the year 1837. Gholson and Claiborne had been elected to the House from the State of Mississippi, at an election held under an order from the governor of that State, to serve at a special session of Congress, convened by proclamation of President Van Buren. The credentials of these gentlemen were referred to a committee who after an investigation made a report. The House declared them to have been duly elected and entitled to hold their seats for the two years prescribed by the Constitution as the term of office for members of that body. They were admitted and sworn. At the regular session of Congress, beginning the first Monday in December of the same year, Messrs. Prentiss and Ward, who had been elected at the time prescribed by the general law, appeared and claimed the seats. The whole subject was again referred to a committee which made a report. It was contended in behalf of Gholson and Claiborne, as is contended here, that the whole question had once been submitted to the House for its judgment, that judgment had been pronounced after a full consideration, and the matter was *res adjudicata*. But the House refused to recognize the validity of the plea, and held that notwithstanding the former judgment its power again to consider and determine the question was plenary. It rescinded the former judgment and ejected Claiborne and Gholson from their seats. Prentiss and Ward, however, were not admitted; the people were required to have another election.

The next case in our legislative history came up in the Senate from the State of Indiana in 1857. Messrs. Bright and Fitch, claiming to have been chosen Senators by the Legislature of that State, presented their credentials, which were referred to a committee. The committee reported that they had been duly elected, and the Senate so declared. Two years thereafter a memorial was presented from the Legislature of the State protesting against the former judgment, asking that it should be reversed and that two other gentlemen chosen by that Legislature should be admitted as Senators. Again the subject was referred to a committee, which reported that every fact then presented and every question of law then raised had been presented and raised upon the former hearing, and upon the recommendation of the committee the Senate voted that the case was *res adjudicata*, that the former judgment was final, and concluded the parties, the State of Indiana, and the whole world.

It appears that there was no question about conflicting governments in the State. The Legislature that elected Bright and Fitch was conceded on all sides to have been the legally organized Legis-

lature of the State. The only matter in controversy related to the regularity and lawfulness of the manner of the election. The vote stood thirty in favor of the report to fifteen against it. But in the minority stood the late Senator Chandler, Mr. Collamer of Vermont, Mr. Douglas of Illinois, Mr. Fessenden of Maine, Mr. HAMLIN, now a Senator, Mr. Seward of New York, Mr. Trumbull of Illinois, and Mr. Wilson, afterward Vice-President of the United States. These gentlemen held to the same opinions that I advocate to-day in regard to the validity of the plea interposed. They were persons of the greatest reputation, and their opinions are entitled to great weight. Their arguments furnish much of the reasoning advanced here to-day.

Again the question was presented to the Senate in the year 1874 in a contest between Spencer and Sykes, each of whom claimed to have been chosen by the lawful Legislature of the State of Alabama. In that State, as in Louisiana, two bodies were organized and claimed to be the lawful Legislature. One of these bodies chose Spencer; the other chose Sykes. Both gentlemen appeared here and claimed the seat. Their credentials, according to the rules, were referred to a committee, a majority of which reported in favor of Spencer. The Senate, by a party majority, sustained the report, and Spencer was sworn in. Afterward the Legislature memorialized the Senate, protesting against its former action, and again the question was sent to committee. A majority of the committee reported that the former judgment of the Senate was conclusive, but the Senate never voted or acted upon the report, or the resolution that accompanied it.

It thus appears that the general question as to the force and effect to be given to the judgment of a legislative body in deciding upon the election of one of its members has once been settled by the Senate and once by the House of Representatives, and that the two decisions are directly antagonistic.

The Senate has affirmed that the judgment is conclusive; the House has refused to be thus bound.

The proposition that such a judgment is to have the same force and effect as the decree of a judicial tribunal settling a question of private right, to my mind, borders upon absurdity. Yet I will agree that if there had been such a line of decisions extending through a course of years, I would not only doubt the correctness of my own opinion but would accept these decisions as part of our parliamentary law. Accepting them as parliamentary law, I would uphold and maintain them. But we have no such line of decisions. As we have seen, but two cases have been decided. When we examine into the facts we find that neither of them is like the one under consideration. In the Indiana case the Legislature that elected Bright and Fitch was acknowledged by everybody to have been the only true and lawful Legislature of the State. No other body of men opposed its claim. The question presented was whether that Legislature had proceeded in a regular manner to the election of Senators. The Senate held that the manner of election was proper and that Bright and Fitch had been duly elected, that is conformably to law, by the only organized political society in the State of Indiana. Having once settled a question, relating only "to manner," the Senate declined to reverse its decision. So in the Mississippi case the regularity of the election only was involved. The House, however, did "*rescind*" its former judgment.

The case before us is altogether different. No question as to form or manner is presented. We affirm that the State is denied representation and that the plea, if sustained, will retain in the Senate one who represents no government and was elected by a body that

was not a legislature, has never been recognized as a legislature by any authority State or national, and was no better than a mob. If the plea shall be sustained, Mr. KELLOGG will owe his election to the Senate, and not to the Legislature, as many of his adherents owed their election not to the people, but to returning boards.

If we shall fail to establish the marked differences between this case and the one referred to, if we shall fail to show that the Legislature that elected Mr. Spofford was the true and lawful Legislature of the State, the only body that could—we go further and say the only body that did—exercise legislative power in Louisiana, then unquestionably Mr. KELLOGG is entitled to the seat and Spofford should be repelled.

The issue is plain; it is distinct; everybody can understand it. It is stripped of all maxims and all pleas. It is a question of fact and of constitutional law. The underlying principles involved are easy of comprehension; the dumbest mind can understand them. Such an issue is suited to the genius of our people. I invite their candid attention.

But I beg not to be misunderstood. I do not assert that the Senate rests under the obligation to reconsider and rehear every case of a contested election that may be brought to its notice. This supreme and final arbiter in the settlement of every question that may arise as to its organization and its constituent parts should exercise a sound discretion and be guided by enlightened conscience. It should not for light or trivial reasons set aside its deliberate judgment, nor in cases of doubtful right. When the power of reconsideration is invoked for such cases it may well say, "No; the matter has been fully and fairly considered; judgment has been pronounced upon an intelligent view of all the facts and of every question of law. No good reason is shown why there shall be another investigation, another argument, and another decision. The case has been adjudged, and there it shall rest."

On the other hand, when it is manifest that a former judgment was made upon a mistake of facts; that the Senate was imposed upon by artifice or fraud or had reached a conclusion clearly and manifestly wrong and in violation of the constitutional rights of one of the States of the Union, then there rests upon the Senate a duty which it should hasten to perform; the duty to correct the judgment, to rectify the wrong, and restore to the State rights of which it has been unjustly deprived. Will not all agree to this? Will any person here in this presence deny the obligation? Will any one go before the American people and say that a State may be deprived of its just representation by a judgment not in harmony with the Constitution? Will any Senator by making false issues or by appeals to sectional differences endeavor to hide away the true question to be settled? I fear, Mr. President—and the history of the past ten years does not quiet my apprehensions, the report of the minority of the committee, sustained by no fact, but dealing in menaces, gives additional ground to fear—that such will be the course taken to-day.

Warning has been given that the action of Senators from the States engaged in the rebellion will be subjected to the severest criticism. We have been told in effect that we are expected to maintain the claim of Mr. KELLOGG, or else to be considered false to duty, disloyal to the Government, and unworthy of the generous confidence reposed in us by the great body of the people of the North. We recognize the obligation which that confidence imposes. Patriotism, honor, self-interest, every motive that can control the actions of men, unite

in constraining us to faithfully keep "our vows," to uphold the Constitution and laws, and do all that men can do to promote the glory and prosperity, the peace and happiness of our common country. We have no other country. Here we were born; here we expect to live; here to die, and here will be the homes of the children who are to succeed us. The great-hearted people instinctively have seized and recognized these truths. Gifted with a profound insight as to the character of our institutions, denied by some mysterious freak of nature to many of their public men, they have welcomed us back to the Union, not to follow blindly the opinions of others, nor to register in this council chamber their edicts, but to take part in its deliberations and assist in the conduct of affairs. They expect us, and have the right to expect us, to exercise independent thought and to speak what we believe to be truth, being responsible, as are all the servants of the people, to an enlightened public opinion.

Therefore we appeal to the intelligent judgment of our fellow-citizens throughout these States, and submit to them the reasons for our action. If it shall be found that we have been led by party spirit or controlled by unworthy motives to do injustice and violate the sacred obligations under which we rest to uphold in all its purity the Constitution that gathers us here together, then upon us will be visited, and justly, the severest condemnation.

Let us then inquire whether the State of Louisiana has been deprived of its rightful representation here.

The Constitution, article 1, section 3, declares that—

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof.

This clause is the very basis of our Federal Union. It is known not only to you Senators, but also to the whole people, that the adoption of the Constitution hinged upon these few words. States, equal in dignity, equal in authority, equal in the pride of sovereignty, were represented by delegates in the convention at Philadelphia. The desire for a more perfect Union than existed under the confederation prompted them to meet in this great council. Each of them desired not only to retain its autonomy but also its equal voice and equal share in all the deliberations and acts of the Government to be created. Earnest and angry debate arose upon this question. The differences came near defeating the whole scheme, but at last the smaller States, yielding the question of representation according to numbers in the House of Representatives, demanded that they should have equal representation in this body—that Delaware, with its single Representative, should here be equal in position, in power, and influence to New York with its thirty-five, and this was agreed upon.

In the one body the people, as such, were to have representation, but here the States. Two Senators were to be chosen from each State by the Legislature thereof. Senators thus chosen, and no others, were to be admitted. They were to represent the people in their organized capacity as a political society, or, in other words, the government of the States. They were to represent a government republican in form, with all the departments necessary to the protection "of life, liberty, and property;" with an executive, a judiciary, and a legislature. Such a State is entitled to representation in the Senate. This right cannot be denied. It is a constitutional right. It is not a right which has existed only in the past, or exists only for this day; it is a continuing right, one that can never be taken away, for with so much jealousy was it regarded, and of such transcendent importance, that it is excepted from the constitutional power of amendment. The

State of Louisiana from the day it was admitted into the Union has possessed this right, and will continue to possess it as long as her Federal relations shall continue undisturbed.

And Senators to represent this organized political society must be chosen by "the Legislature thereof." The Legislature of no other State, nor of all the States, can make the choice. The governor of Louisiana, the judiciary, and the people cannot; the Senate of the United States cannot; the law-making power, that which is actually and truly the recognized Legislature, and no other, can make the choice. No body pretending to the authority of a legislature can choose a Senator. Whatever may be the forms under which it may have organized, however plausible may be its pretensions, if it be wanting in the one vital quality of being the law-making power of the State, its action in respect to the choice of a Senator cannot be recognized.

Has that choice been made? Has the Legislature, the law-making power of Louisiana, exercised this power conferred upon it by the Constitution? Has it chosen a Senator to take his place here as the guardian of the interests of the State and its people, and, in conjunction with Senators from other States, to make laws for the nation, to shape its policies, and provide for the general welfare?

It is known that two rival bodies claimed to be the Legislature of the State; each contended that it had been elected according to law; each attempted an organization; each went through the form of choosing a Senator to represent the State in this place. The persons thus chosen are before us to-day. Who is entitled to the seat?

The Constitution of the United States has not created a tribunal, nor has it authorized any department of Government to settle a controversy such as arose in Louisiana. It is true the Constitution makes it the duty of the Government of the United States on the application of the Legislature, or of the executive, (when the Legislature cannot be convened,) to protect each State against domestic violence, and Congress to carry out this provision has authorized the President to employ the land and naval forces of the United States, and if necessary to call out the militia. But this is intended as a protection to the lawful government and people of the State. Where this power is invoked the duty may be cast upon the President in giving directions for the employment of the land and naval forces to decide between conflicting claims of rival governments. His decision may be right or it may be wrong. Congress can interfere and reverse his decision.

But although this power was invoked by Governor Packard, one of the claimants of the office of governor, and also by what is known as the Packard legislature, the President did not interfere, nor did he undertake to settle the dispute. General Grant, and after him President Hayes, taking precautions to prevent any actual outbreak, left the whole controversy to be settled by the State of Louisiana. Congress was then in session, but by neither body was any act done looking to a settlement. Congress left the State to decide which was its lawful government.

So also the Senate of the United States, as an incident to its power and duty to judge of the election, qualifications, and returns of its members, may have jurisdiction to determine, in the absence of any other authoritative decision, which of two bodies claiming legislative power and sending Senators to represent the State here is the true and legal Legislature. But the right to make such a decision is only an incident to another right, a necessary step to the performance of a duty, and cannot be exercised contrary to facts or contrary to the decision of that tribunal which is at last the supreme arbiter.

The Senate hesitated to perform this delicate task of deciding between the rival governments, for it appears from its Journal that Mr. KELLOGG, who had been chosen by the Packard legislature, presented his credentials, and on the 4th March, 1877, offering to take the oaths prescribed by law, asked to be seated. His application, however, was refused, and the credentials were sent to a committee.

We have thus seen that neither the President, nor Congress, nor the Senate decided between these rival bodies. What authority then could settle and settle conclusively which was the legal and true Legislature? I answer, the State herself.

No one will contend that any authority acting under the Constitution did settle the question, nor indeed, except for the purposes and under the conditions that I have named, that the Constitution interferes with or pretends to interfere with this just and absolute power of the State.

If the State has settled the question, and settled it finally and irrevocably, what power or authority or jurisdiction can reverse or annul its decision? The President cannot do it; Congress cannot do it; the Senate cannot. From its action there is no appeal.

Arguing the Rhode Island case of *Luther vs. Borden*, Mr. Webster truly said:

The decision of Rhode Island by her Legislature, by her executive, by adjudication of her highest court, has shut up the whole case. Do you propose—I will not put it in that form—but would it be proper for this court to reverse their adjudication? That declares that the people of Rhode Island knew nothing of her “people’s constitution.” Is it possible for the court to know anything about it? It seems to me that if there were nothing else in the case the proceedings of Rhode Island herself must stop every mouth in the court and out of it. *Rhode Island is competent to decide the question herself, and everybody else is bound by her decision.*—*Works*, volume 6, page 239.

And Mr. Morton, of Indiana, expressed in stronger and more elaborate phrase the same opinion in a report upon the contest for a seat in this body between Ray and McMillin, from Louisiana, in the year 1873. His words are:

The Constitution says that the Senate of the United States shall consist of two Senators from each State, chosen by the Legislature thereof for six years. The manner of constituting the Legislature is left absolutely to each State, and the question of its organization must be left to be decided by such tribunals or regulations as are provided by the constitution and laws of the State, and the only question about which the Senate may inquire in determining the admission of Senators is whether they have been chosen by the Legislature of the State, *that legislature recognized by the State or whose organization has been recognized by other departments of the State government.* Under our complex system of government all questions of State governments under their own laws must be left to the decision of the State tribunals created for that purpose and when such decisions have been made they must be accepted by the Government of the United States in their dealings with such States. It is no answer to this to say that in a particular case such tribunals will or have decided wrongfully. The Government of the United States has no right to reverse their decision so long as the State possesses a government republican in its form.

This is the deliberately recorded opinion of one of the great leaders of the republican party, and a great leader in this Chamber. And who can by logic or reason disturb the solid foundation of this opinion? It is based upon constitutional and public law. It has its conception in the fundamental truth that these States are and must be self-governing as to all matters and all questions not delegated by the people to the Government of the United States; that they have the right and power at any time to alter, amend, or change their own governments, to administer their own affairs, to provide for every department of State administration, to call an executive, a legislature, a judiciary into being, to determine how all questions of con-

troverted authority shall be settled, and pass upon every conflict between different departments and every conflict between rival claimants to any authority. The methods by which this shall be done cannot be reviewed or reversed by any tribunal. The only inquiry that can be made is, What has the State decided—how has the State decided?

The decision may have been unwise; it may have been made, to use Mr. Morton's expression, "wrongfully," but, as he has put it—

The Government of the United States has no right to review their decisions so long as the State possesses a government republican in its form.

Now, has this question been presented to the State of Louisiana, and has the State decided it?

In January, 1877, there were two claimants of the office of governor and two rival bodies claiming to be the Legislature of the State. One of these bodies declared that Nicholls had been elected governor by the people, and inducted him into office. The other declared that Packard had been elected, and went through the form of his inauguration. All recognized the same constitution and professed obedience to the same laws.

The Packard legislature assembled at the State-house. The doors and entrances to the building were barricaded. Armed policemen to the number of hundreds stood ready to prevent the people of the State from crossing the threshold. A detachment of United States troops was stationed close by to protect the inmates. For weeks this body occupied this stronghold, eating, sleeping, and living within its walls. Beyond the lines of their fortification they possessed no authority. Once and once only during their brief existence as a legislative body they attempted to enforce an act of legislation beyond the portals of their prison-house. But their agents were arrested by the strong arm of the law invoked by their rivals, and the endeavor failed. They went through the form of directing warrants to be issued upon the treasury in settlement for their services as legislators, and these remain unpaid to this day. They chose two Senators to represent the State in the Senate of the United States, and their work was ended. One by one they stole away, and those among them who had been truly elected by the people joined the Nicholls legislature. There they renewed their oaths to support the constitution of the State, acknowledged that their first attempt at organization was a sham and a fraud, and joined with the other body in electing Mr. Spofford to the seat in the Senate which he now claims.

In all our history no more glaring attempt has been made by fraud and deceit to cheat the people of their just rights and impose upon them a government contrary to their choice. In 1872 in the same State the people had elected McEnery to be their governor and a democratic Legislature. Mr. KELLOGG had been the republican candidate and claimed the executive office for himself and that a majority of his candidates had been elected to the Legislature. He applied to a drunken judge of one of the courts of the United States to assist him in gaining possession of power. The process of the court was freely issued, and the President of the United States, misled no doubt by the advice of his law officer, lent the great power of this Government and its military arm to the recognition and maintenance of the orders and decrees of the court. The people were defrauded and Mr. KELLOGG and his legislature were firmly seated in authority.

Again, in 1874 the people had elected a majority of the legislators in opposition to Governor KELLOGG's party. But the minority, with the help of the military forces of the Government, succeeded in effect-

ing an organization, and the singular spectacle was presented of an officer wearing the uniform of the United States purging a State Legislature and driving from it those who had been elected by the people. Having twice succeeded by force and fraud in defeating the will of the people as expressed at the ballot-box, and wishing to gain a place here, Mr. KELLOGG made a third attempt to organize by fraud another legislative body, which, as we have seen, maintained a sickly existence and then perished from want of vital force. Public attention had been drawn to the consideration of affairs in Louisiana. An intelligent public opinion expressed, in language fierce with indignation, its sense of the wrongs that had been done to the people of that unhappy State, and the President wisely left it to settle its own affairs. The Packard legislature quietly separated. No act done by it now has, or ever had, any authority in the State, or has been recognized by any department of government, State or national. The man whom it inaugurated as governor went abroad, and there holds an office from the Federal Government. The only place in America where life or vigor has been given to any act of that Legislature is here in this Chamber. Here it is gravely said that that body was the Legislature of the State of Louisiana.

But let us look for a moment at the other body—the Nicholls legislature. It assembled at the time required by the constitution and laws; it was duly organized, and inducted into office the person elected as chief executive. Strong in the affections and confidence of the people, it sat with open doors, and to its chambers all were invited. It proceeded with all the gravity of earnest conviction and with the consciousness of lawful authority to the business of legislation. It was recognized by the people, by the courts, and by all the civil officers of the State. It levied and collected taxes; it created courts whose jurisdiction has never been questioned, and which are to-day open to suitors for the enforcement of rights and the redress of wrongs. It enacted laws that are enforced by courts, State and Federal.

Under the authority of the Nicholls government the people of Louisiana have lived in peace and quiet now since January, 1877. Every department of that government is in active being, performing every duty and discharging every proper function. Under laws enacted by its legislature senators and representatives to the State Legislature are elected, and members of the Federal House of Representatives. The lawful successor to the Nicholls legislature chose a Senator to this body whose credentials bore the broad seal of the State of Louisiana affixed by Governor Nicholls.

Who can, then, question the acts of the Nicholls legislature? The President cannot; Congress cannot. Who can question the lawfulness of the Nicholls government? If Packard were to return to Louisiana and incite the people to domestic violence, could the President or Congress refuse to Governor Nicholls or his legislature the assistance guaranteed by the Constitution on the ground that he is not the lawful governor of the State? If such a call had been made two years ago by the legislature that elected Mr. Spofford, could the appeal have been neglected? No Senator is bold enough to answer affirmatively; and why? Because the State of Louisiana has settled all these questions for herself. She has decided that Nicholls was her lawful governor, and that the Nicholls legislature was the lawful Legislature. She enforces laws placed upon the statute-book before either of these claimants was chosen, and thus has settled that the Nicholls legislature was from the beginning the only true legislature.

The State having thus settled the question, everybody else is concluded. This, in the words of Mr. Webster, "must stop every mouth." The Senate is concluded like everybody else. Authority to judge of the election of a Senator does not confer authority to decide that to be a legislature which is not a legislature any more than it confers authority to decide that to be law which is not law. The Senate is under the same obligation with the President and Congress to recognize the political organization that the Constitution recognizes as the State—that organization with which the Government has Federal relations and which in virtue of those relations is entitled to representation. The people of that organization have the right to representation in the House of Representatives; and the Legislature which is part of it, and no other body, can choose two persons to serve the State in the Senate. The decision of the State, to use the words of Mr. Morton, may have been "wrongful," but if the State has made the decision that decision must be accepted as final, and "*the Government of the United States has no right to reverse*" it as long as the State possesses a government republican in form.

Upon this ground alone we can safely rest the claim of Mr. Spofford to the seat, for to this conclusion every impartial mind must come. But we are not content to do so. We are prepared to show, and the documentary evidence within the reach of every Senator will establish that the Kellogg legislature did not derive its authority to assemble as a legislative body from the people. Its only claim to authority rests upon the fraudulent acts of a returning board whose crimes are known to the whole country.

I have referred briefly to the canvass in Louisiana in 1876. The people of that State, inspired with the hope of a change of administration at the Federal city, and animated with the expectation of relief from the thralldom in which they had been held for so many years, put forth the most energetic efforts to gain a majority. These efforts were met with equal energy by Governor KELLOGG and his associated band of adventurers. They were loath to yield the offices of dignity and honor, and the treasury which had fed and strengthened them through a long period of misrule, of license, and plunder. Promptly their forces were organized, unscrupulously they employed every agency that arbitrary power, and cunningly devised machinery placed at their disposal. Confident of success, they laughed at the despairing struggle of a once free but then subjugated people. They boldly proclaimed that they would come off victors, for experience had taught them the value of their methods. But when the election was over it was discovered not only that Packard was beaten for governor, but that a majority of the democratic candidates for senators and representatives had been elected to the State Legislature. This was a cruel disappointment to Governor KELLOGG, who was a prospective candidate for a seat in the Senate of the United States. His life in Louisiana had been the life of an office-holder. He had been connected with politics and official station from the time he went there. Success had attended him in every effort, and he had looked with confident expectation to a seat in this great council of the nation. The people now had decided against him, and it became necessary to resort again to the machinery provided by the election laws to enable a minority party to retain possession of power and control the great offices of State. This machinery had been used before, and its use and value were well known to the hordes of bad men who for so long a time had rioted in the luxury of ill-gotten place. It had been denounced by congressional committees, who had published to the world the infamy

of its methods, but in the extremity to which they were reduced Governor KELLOGG and his associates did not hesitate to use it, and, as will be shown, they used it with a boldness that almost concealed their crime. Their purpose was strengthened by the ready counsel of others, for it so happened, and unfortunately for the oppressed people of Louisiana, that its electoral vote would decide the result of a great national contest.

The election laws gave to the governor power to appoint a registrar of voters for each of the fifty-seven parishes of the State and eighteen wards of the city of New Orleans. These registrars appointed three commissioners of election for each of the seven hundred polling places, and besides were required to appoint one or more constables to keep the peace at each polling place. The registrars had the power to admit or reject the name of any voter. The law forbade any court to interfere with the exercise of this power. In every instance a republican was appointed to be registrar, and at least two of the three commissioners of election were of the same party, as was true of the constables whose number was not limited.

Mr. KELLOGG. Will the Senator allow me one moment to correct him?

Mr. BAILEY. I prefer not to be interrupted.

Mr. KELLOGG. The Senator has fallen into so gross an error that I should like to correct him.

Mr. BAILEY. If I have fallen into an error the Senator will have ample opportunity to correct it. I cannot stop to take notice of every matter, and if in some unimportant particular there may be a mistake it can be corrected hereafter, and no one will more cheerfully join in making that correction than myself.

Mr. KELLOGG. No doubt of it.

Mr. BAILEY. It will thus be seen that the whole election machinery of the State was under the absolute control of the governor, and including registrars, commissioners of election, and policemen, not less than two thousand eight hundred persons of his own party and his own adherents were connected with it. To this number must be added fourteen hundred supervisors of election appointed by the United States court at New Orleans, two for each poll, and twenty-three hundred deputy marshals appointed by the marshal of the district, and upon the advice of the Attorney-General at Washington large detachments of the Army were scattered through the State as bystanders, to serve as a *posse comitatus*, if the marshal should find use for them.

In addition to this, the republican committee had sent to each registrar a statement showing the number of colored voters in his parish, urging that he should exert himself to have their names registered, and bring them to the polls to vote the republican ticket, and stating that his claims to recognition for official station would depend upon the fidelity with which he did this partisan work. But, not content with these preparations, within one week of the day of election, either by the instigation of the governor, or his party friends, and he to profit by the act, more than ten thousand warrants were issued out of the circuit court at New Orleans for the arrest of citizens who were alleged to have falsely registered as competent voters. In this number were included many of the oldest and most respectable citizens, and among them was a Representative in the Congress of the United States. The affidavits upon which the warrants were issued were made by wholesale and by two policemen. Thirteen hundred of these cases were tried before the day of election and the warrants dismissed, but

the remainder for want of time and for other reasons were not heard, and more than five thousand citizens were excluded from the ballot-box. So palpable was the fraud, that when the commissioner presented his bill for more than \$15,000 for these services, Judge Billings, of the circuit court of the United States, told him, "On the face of these papers there is a gross fraud, and I will not certify a cent."

As an atonement, however, for this successful attempt to rob so many thousands of white men of the ballot, they issued in the city of New Orleans to the blacks, whose total population was only fifty-seven thousand, more than twenty-three thousand certificates of registration, upon each of which, owing to the shrewdly-contrived election laws, a ballot could be cast. There were cases where the same person held half a dozen of these certificates, and could repeat his vote by going from one polling-place to another.

But notwithstanding all this, and the willing aid given by the Attorney-General and Secretary of War, and although an army of more than seven thousand registrars, commissioners, constables, supervisors, and deputy marshals were scattered throughout the State under the pretense of preserving the peace and guarding the purity of the ballot-box, the people of Louisiana decided against Governor KELLOGG and by a majority exceeding 8,000 in a popular vote of 160,000, the largest ever cast in the State and greater in proportion than almost any other State, elected a democrat to be governor and a majority of democrats to the Legislature.

Profound peace reigned everywhere. The democrats had been deprived of the fruits of victory in 1872 and 1874 under the pretense of violence and intimidation. They had seen the cunningly-devised machinery of the returning board set at work upon more than one occasion to fabricate returns that defeated the expressions of the ballot-box. They exhorted their friends in every ward and parish to use every effort to bring every voter to the polls and to afford no shadow of excuse to charges of intimidation or violence. No such peaceful election had been known in Louisiana since reconstruction was inaugurated. No such peaceful election was seen in any one of the States of the Union. Although by the election laws it was the duty of each of the registrars to report every act of intimidation and violence occurring during the progress of registration, and of every commissioner of election to report similar misconduct on the day of election and to send these reports with the compiled returns to the returning board within forty-eight hours of the close of the election, and although these registrars and in every instance two of the three commissioners of election were republicans, yet such a report was made from only a single parish, and that a report of republican frauds.

The result was astounding; the defeat was crushing. In other communities the verdict of the people would have been accepted by even the most unscrupulous of partisans as a finality. The boldest among them would have shrunk from encountering an indignant and outraged public opinion, and would have stood abashed by traditional reverence for the sacredness of the ballot; but such traditions had been banished from Louisiana for almost a generation. The horde of adventurers who had hastened to that political El Dorado had so often been confronted by adverse ballots and so often by fraud, by the aid of returning boards, of Federal judges, and Federal power had wrested victory from defeat, that they did not despair of success. The returning board was still in reserve. It was brought to the front, and begun its subtle and destructive work.

By the laws of the State this board was to be composed of *five* persons chosen from all political parties. At the time its aid was invoked its number was not full; four republicans, and they representing the worst elements in the republican party, were in charge. The democrats, instructed by experience of their methods in the past, and remembering that on other occasions they had not scrupled to exercise power without regard to truth or justice, earnestly insisted that a fifth member should be added, and, as the law required, belonging to the democratic party. But this reasonable and lawful request was refused. It did not suit the purposes of the defeated and disappointed office-holders to have an impartial or unfriendly witness to their proceedings. Thus, in defiance of the plain commands of the very law which brought the board into being, they began the work mapped out for them by their masters.

This power of this board, although semi-judicial in its nature, was limited in extent; they had the power to examine the returns from the different parishes, and it was made their duty to correct and tabulate the votes cast at each poll. To this general and plain rule there were two exceptions, and two only.

First. When the commissioners of elections at a poll certified that "*on the day of the election*" there had been "any riot, tumult, acts of violence, intimidation or disturbance, bribery or corrupt influences," "*at or near*" any poll or voting-place, preventing or tending to prevent a fair, free, peaceable, or full vote.

Second. Where the registrars, whose work was to be completed nine days before the election, certified that any of the causes before recited, at or near the places of registration or revision of registration, prevented or tended to prevent a fair, free, peaceable, and full registration of all the qualified voters of the parish.

The law required the commissioners of election, where such riot, tumult, &c., prevailed on the day of election, to make, in duplicate and under oath, a clear and full statement of all the facts relating thereto, corroborated under oath by three respectable citizens, qualified voters of the parish. One of these duplicates was to be given to the supervisor of registration, and by him was to be sent with his consolidated return to the returning board.

The supervisor of registration was required to make a like statement of riot, tumult, intimidation, &c., verified in like manner by the oaths of three respectable citizens and qualified voters of the parish.

The law required the commissioners of election within twenty-four hours after the closing of the polls to make out and deliver duplicate returns of the election; one to the supervisor of registration and one to the clerk of the district court of the parish.

The supervisor of registration was required within twenty-four hours thereafter to consolidate the returns and to return them to the returning board, together with a copy of any statement as to violence, disturbance, &c., or other offenses specified above, all to be *securely sealed*.

The returning board was required to canvass and compile the statement of votes made by the commissioners of election and make returns to the secretary of state. Whenever from any poll or voting place a statement of any supervisor of registration or commissioner of election, made in form and at the time required above, was received, it was made the duty of the board to determine the facts, and if not convinced from the statements filed, before referred to, it was authorized to hear other testimony. If satisfied upon all the testimony that a fair and peaceable election had not been held, it was author-

ized to cast out the vote at a polling place or of the entire parish, as the facts might warrant.

This brief statement of the duties of the board and the extent of its authority shows that the task it undertook presented extraordinary difficulties. The registrars and commissioners of election had simply counted and tabulated the votes at the polls and of the parishes. They had made no statements or complaints of riot, fraud, intimidation, violence, or other fact that authorized the board to do more than "canvass and compile" the votes, and they did not make the statements for the very plain reason that the facts did not exist. There was no ground upon which the returning board could base its semi-judicial investigation. The duty of its members was to "*canvass and compile*" the votes and issue certificates to the successful candidates.

But the veterans who had borne the brunt of the fierce conflicts in 1872 and 1874 were not discouraged by the impediments that stood in the way. Experience had taught them how easily they could be removed, and they announced their readiness to begin the work. Political harlots with their panders flocked in countless numbers to the capital of the State, ready to sell their virtuous oaths for a price. Protests and certificates were manufactured by the score many days after the time when by law they were to be filed. Affidavits were written by hundreds and thousands supporting these false protests and certificates. Jewett, the secretary of the republican committee—the same who gave warning to the registrars that their claims to recognition by the incoming administration depended upon their success in registering colored voters and bringing them to the polls—swears that he himself wrote three of these certificates. Other pens were busy and other brains were fertile. A vast pile of such stuff was heaped before the board. Its members worked with gleeful spirit, for the base work was well suited to their tastes and its results promised great rewards—nor have they been disappointed in their reckoning. When their labors were ended it was found they had more than met the expectations of their employers. The verdict of the people was set aside. Packard, who had been beaten eight thousand votes, was declared to be governor-elect. Candidates for the senate and house of representatives who had been rejected by large majorities were announced as successful.

Three senators and ten representatives discarded at the polls were granted certificates. Hamlett and Blunt and Weber were returned as senators. Barringham and Brewster from Ouachita; Sheldon and Blair from Morehouse; Holt, Bird, and Lane, from West Baton Rouge; Johnson from De Soto; and Early and Swazie from West Feliciana, were returned as representatives, although all were beaten. Certificates of election were given them, and on the 1st of January, 1877, when by the constitution the Legislature was to assemble, these men appeared, claimed, and were admitted to seats.

Thirty-six senators and one hundred and twenty representatives compose the Legislature of the State, and by the constitution a quorum necessary for organization or the transaction of business consists of a majority in each body. In the Packard senate sixteen duly elected senators were present, and fifty-eight duly elected representatives. To those numbers were added the three senators and ten representatives created by the act of the returning board; in each house an organization was effected, and Governor KELLOGG was notified of the fact. On the day fixed by the act of Congress they began to vote for Senator to represent the State in the Senate. Two of the State senators had deserted them, but a sufficient number of representatives

went into the joint convention to make a majority of the whole number of both bodies. Mr. KELLOGG was thus chosen, and this is the foundation of his claim to a seat here.

Mr. President, I have endeavored to state with brevity the facts connected with the canvass in 1876 and its result; the action of the returning board and the manner of organizing what is known as the Packard legislature. The facts cannot be disputed. They are beyond controversy. I invite Senators who uphold the pretensions of Mr. KELLOGG to examine the facts and point out wherein they are misstated.

But, sir, they will not undertake to meet the facts or to discuss this matter upon its merits. They will endeavor to-day, as they have done in the past, to shelter this pretender to a seat in the Senate under the protecting edict of a returning board. They will claim, as was done on another memorable occasion, that nothing "*aliunde*" the record shall be heard, and ask the benefit of the plea *res adjudicata*. Argument upon the facts and plain expositions of constitutional law are answered by warnings to Senators from a particular section that they are upon trial before the American people, who will judge of the sincerity of their vows of fidelity to the Constitution by the alacrity with which they yield the right of thought and prove themselves false to duty, to manhood, and to our common country; for the minority of the Committee on Privileges and Elections, which disdained to state a fact or otherwise to justify its action, has declared—

That the men whose professions of returning loyalty to the Constitution have been trusted by the generous confidence of the American people, are now to give evidence of the sincerity of their vows. The people will thoroughly understand this matter and will not be likely to be deceived again.

Sir, we want the American people to understand this matter. We believe that the people are superior to this sectional clamor, and will demand that the constitutional rights of one of the States of this Union shall be vindicated and her wrongs redressed.

Let us come back to the point before us. Upon the facts stated, and they cannot be disputed, is Mr. KELLOGG entitled to the great position he claims? As I have said before, the determination of this question involves the inquiry whether the body of men that elected him was the Legislature of the State of Louisiana? If it was not the Legislature, then under the Constitution he has no *status* here, for it is expressly declared that Senators in Congress shall be chosen by the Legislatures of the States.

Now, if the body that sent him here had been the only body claiming to act as the Legislature of the State; if its authority and power had been recognized by the other departments of the State government, and if it had made laws that were recognized and binding upon all the people of the State, I would not question, but would affirm the validity of the act; for in such case the State through her departments having settled its legislative authority, "everybody else" is thereby concluded. Nor would it be permissible to institute an inquiry into the methods of its organization or the composition of the body. The decisions of the Legislature itself upon every matter of that kind would be conclusive and binding on all the world.

But the case supposed is not presented. The Packard legislature did not have undisputed possession of the field of legislation. What is known as the Nicholls legislature claimed that it was the lawful Legislature. In that body undoubtedly appeared fifteen senators and forty-four representatives certified to have been elected by the returning board. They were joined by other persons who were

in fact elected by the people, but rejected by the returning board. This body, or rather a senate and house of representatives, was organized. After its organization its strength was increased by the voluntary submission of the Packard legislature, all of whose members, duly elected, joined it. And Mr. Spofford was chosen, all the duly elected members of both bodies joining in making the choice. Now, which was the true Legislature of the State?

This question is not of the first impression. It was once before presented to the Senate in the contest between Spencer and Sykes, each of whom claimed to have been chosen to be Senator by the Legislature of Alabama. The question was referred to a committee and that committee made a report, from which it appears that two bodies claimed to be the Legislature of the State. One of them had a quorum of members certified to have been elected by the returning boards. The other body had a quorum composed in part of members certified by the returning boards and in part of persons actually elected by the people, but whose election was denied by the returning board. The case and the question in these particulars were identical with the one now under consideration. The facts and the conclusions of the committee were stated in a report prepared by Mr. CARPENTER, then as now a Senator from Wisconsin, in a manner so clear as not to admit of being misunderstood. I ask the Secretary to read the passage I have marked from that report, beginning on page 6.

The Chief Clerk read as follows :

When we consider that all the forms prescribed by law for canvassing and certifying an election, and for the organization of the two Houses, are designed to secure to the persons actually elected the right to act in the offices to which in fact they have been elected, it would be sacrificing the end to the means were the Senate to adhere to the mere form, and thus defeat the end which the forms were intended to secure.

The persons in the two bodies claiming to be the senate and house of representatives who voted for Spencer constituted a quorum of both houses of the members actually elected; the persons in the State-house legislature who voted for Sykes did not constitute a quorum of the two houses duly elected, but a quorum of persons certified to have been elected to the two houses. Were the Senate to hold Sykes's election to be valid, it would follow that erroneous certificates, delivered to men conceded not to be elected, had enabled persons who in fact ought not to vote for a Senator to elect a Senator to misrepresent the State for six years. On the other hand, if we treat the court-house legislature as the legal Legislature of the State, it is conceded that we give effect to the will of the people as evidenced by the election. So that, to state the proposition in other words, we are called upon to choose between the form and the substance, the fiction and the fact; and, considering the importance of the election of a Senator, in the opinion of your committee the Senate would not be justified in overriding the will of the people, as expressed at the ballot-box, out of deference to certificates issued erroneously to persons who were not elected.

In the opinion of your committee it is not competent for the Senate to inquire as to the right of individual members to sit in a legislature which is conceded to have a quorum in both houses of legally elected members. But, undoubtedly, the Senate must always inquire whether the body which pretended to elect a Senator was the Legislature of a State or not; because a Senator can only be elected by the Legislature of a State. In this case, Spencer having been seated by the Senate, and being *prima facie* entitled to hold the seat, the Senate cannot oust him without going into an inquiry in regard to the right of the individual persons who claim to constitute the quorum in these respective bodies at the court-house and at the State-house. We cannot oust Spencer from his seat without inquiring and determining that the eight or nine individuals who were elected were not entitled to sit in the Legislature of the State because they lacked the certificates. But if the Senate can inquire into this question at all, it must certainly inquire for the fact rather than the evidence of the fact. It cannot be maintained that when the Senate has been compelled to enter upon such an examination it is estopped by mere *prima facie* evidence of the fact, and the certificate is conceded to be nothing more than *prima facie* evidence. But the Senate must go back of that to the fact itself, and determine whether the persons claiming to hold seats were in fact elected. When we do this we come to the conceded fact that these persons, lacking the cer-

tificate, had in fact been elected, and that the persons who claimed to be the quorum of the two houses were in fact the persons who, in virtue of the election, were entitled to constitute the quorum of both houses.

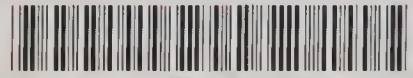
Mr. BAILEY. The republican majority of the Senate adopted the reasoning and conclusions of the committee, and, rejecting Sykes, who had been chosen by the Legislature assembled and organized under certificates from the returning boards, admitted to the seat Mr. Spencer, who was chosen by the Legislature that the committee claimed was actually elected. Now, in what respect does that case differ from the one under consideration? I affirm, and I make the affirmation with all earnestness and sincerity, challenging contradiction from any part of this Chamber, from Senators of all parties and from every section, that the only difference is that Spencer was a republican, while Spofford is a democrat.

The case of Spencer is directly in point. No appeals to passion or prejudice or sectional feeling, no effort to revive the memories of our unhappy divisions, nor the threatened denunciation of those who "are now to give evidence of the sincerity of their vows," can change the facts. The precedent exists. The argument of the committee in the Spencer case, as the argument in this case, is conclusive. Its principles are to be found in the American idea of government; in the recognition of the fact that inspectors and canvassers of ballots, returning boards, tabulated statements, certificates, and all the machinery of elections are intended to protect the ballot, to uphold and maintain the recorded will of the people. The verdict of the people thus declared is to be respected in every portion of our great country, in Louisiana as in Maine, in Florida as in Oregon.

The law of majorities is the one general and universal law of these American States. It commands obedience from all alike, from the Senate as from the people. Upon its recognition depends not only the purity of elections but the perpetuity of our institutions. With the spread of democratic ideas it is fast becoming the law of all civilized peoples. It will not be confined to any time, to any country or any race. It will reach to the remotest regions where free government shall be found. And men now living may see realized the prophetic aspiration of the Roman orator and sage:

Nec erit alia lex Romæ, alia Athenis; alia nunc et alia posthac. Sed et omnes gentes, et omni tempore, una lex, et sempiterna et universalis, prævalebit.

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